

U. S. DEPARTMENT OF LABOR

Employees' Compensation Appeals Board

In the Matter of MARY S. REID and U.S. POSTAL SERVICE,
POST OFFICE, Charlotte, NC

*Docket No. 02-2368; Submitted on the Record;
Issued February 19, 2003*

DECISION and ORDER

Before ALEC J. KOROMILAS, DAVID S. GERSON,
WILLIE T.C. THOMAS

The issue is whether the Office of Workers' Compensation Programs properly determined that appellant's request for reconsideration was untimely filed and failed to demonstrate clear evidence of error.

On July 11, 2000 appellant, then a 47-year-old mailhandler, filed a notice of traumatic injury claiming that she injured her back and leg on July 6, 2000 during the performance of her duties. By decision dated September 13, 2000, the Office denied the claim finding that the factual evidence failed to support that an injury occurred on that date and in the manner alleged. Appellant requested a review of the written record. By decision dated March 22, 2001, an Office hearing representative affirmed the denial of appellant's claim finding that the medical evidence failed to establish a causal relationship to the claimed work factors.

On May 22, 2002 the Office received a request for reconsideration dated March 22, 2002. On May 28, 2002 the Office received a copy of appellant's request for reconsideration dated March 22, 2002 along with a May 21, 2002 letter explaining that she had mailed her March 22, 2002 request for reconsideration to the Office on March 22, 2002. New evidence was also submitted and received by the Office on May 28, 2002. By decision dated June 4, 2002, the Office denied appellant's request for reconsideration finding it to be untimely filed and failed to demonstrate clear evidence of error.

The only Office decision before the Board on this appeal is the June 4, 2002 decision denying appellant's request for reconsideration. More than one year has elapsed between the date of the Office's most recent merit decision on March 22, 2001, which denied appellant's claim on the basis that causal relationship was not established and the filing of appellant's appeal on August 30, 2002. The Board lacks jurisdiction to review the merits of appellant's claim.¹

¹ 20 C.F.R. § 501.3(d)(2) requires that an application for review by the Board is filed within one year of the date of the Office's final decision being appealed.

The Board finds that the Office properly denied appellant's request for reconsideration as untimely filed and lacking clear evidence of error.

The Office, through its regulations, has imposed limitations on the exercise of its discretionary authority under 5 U.S.C. § 8128(a). As one such limitation, the Office has stated that it will not review a decision denying or terminating a benefit unless the application for review is filed within one year of the date of that decision.² The Board has found that the imposition of this one-year time limitation does not constitute an abuse of the discretionary authority granted the Office under 5 U.S.C. § 8128(a).³

The Office properly found, in its June 4, 2002 decision, that the one-year time limit for filing a request for reconsideration of the Office's March 22, 2001 decision had expired and that the request for reconsideration dated May 21, 2002 was untimely. The Office had investigated appellant's claim that she had originally filed a request for reconsideration on March 22, 2002 and found that there was no apparent reason, including a change in their mailing address, as to why appellant's request for reconsideration was not included in her file until May 21, 2002. The Board notes that, although appellant asserted in her May 21, 2002 letter that the correspondence mailing address for the Office had changed, review of appellant's letters dated May 21 and March 22, 2002 contained the exact same address for the Office. Additionally, there is no credible evidence in the file such as an envelope containing a postmark to indicate a timely filing on March 22, 2002. Accordingly, the Board finds that the Office properly determined that May 21, 2002 was the proper date of appellant's request for reconsideration. As May 21, 2002 is outside the one-year limitation, appellant's May 21, 2002 request for reconsideration was untimely.

In those cases where a request for reconsideration is not timely filed, the Board has held that the Office must nevertheless undertake a limited review of the case to determine whether there is clear evidence of error pursuant to the untimely request.⁴ Office procedures state that the Office will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.607, if the claimant's application for review shows "clear evidence of error" on the part of the Office.⁵

To establish clear evidence of error, a claimant must submit evidence relevant to the issue, which was decided by the Office.⁶ The evidence must be positive, precise and explicit and must be manifest on its face that the Office committed an error.⁷ Evidence which does not raise a substantial question concerning the correctness of the Office's decision is insufficient to

² 20 C.F.R. § 10.607(a).

³ *Jesus D. Sanchez*, 41 ECAB 964 (1990); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

⁴ *Gregory Griffin*, 41 ECAB 186 (1989); *petition for recon. denied*, 41 ECAB 458 (1990).

⁵ Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.3(b) (May 1991).

⁶ *Dean D. Beets*, 43 ECAB 1153 (1992).

⁷ *Leona N. Travis*, 43 ECAB 227 (1991).

establish clear evidence of error.⁸ It is not enough merely to show that the evidence could be construed so as to produce a contrary conclusion.⁹ This entails a limited review by the Office of how the evidence submitted with the reconsideration request bears on the evidence previously of record and whether the new evidence demonstrates clear error on the part of the Office.¹⁰

To show clear evidence of error, the evidence submitted must not only be of sufficient probative value to create a conflict in medical opinion or establish a clear procedural error, but must be of sufficient probative value to *prima facie* shift the weight of the evidence in favor of the claimant and raise a substantial question as to the correctness of the Office decision.¹¹ The Board makes an independent determination of whether a claimant has submitted clear evidence of error on the part of the Office such that the Office abused its discretion in denying merit review in the face of such evidence.¹²

In support of her request for reconsideration, appellant submitted duty status reports (Form CA-17) from Dr. Robert B. McBride, an orthopedic surgeon, dated December 14, 2000 through May 22, 2001, medical notes by Dr. McBride and Dr. Elmer G. Pinzon, an orthopedic surgeon, dated October 17, 2000 through March 21, 2002, along with radiology reports dated July 28 and October 23, 2000 and February 18, 2002. The Board notes that appellant's claim was denied on the basis that causal relationship was not established. The evidence appellant submitted on reconsideration does not show clear error on the part of the Office as there is no definitive statement from a medical professional, which unequivocally relates appellant's symptoms to her claimed work factors. Since the evidence appellant submitted with her reconsideration request does not establish that the Office committed an error in its March 22, 2001 decision, it is insufficient to establish clear evidence of error.

As appellant's request for reconsideration was untimely filed and did not establish clear evidence of error, the Office properly denied it.

The decision of the Office of Workers' Compensation Programs dated June 4, 2002 is affirmed.

Dated, Washington, DC
February 19, 2003

Alec J. Koromilas

⁸ *Jesus D. Sanchez, supra* note 3

⁹ *Leona N. Travis, supra* note 7.

¹⁰ *Nelson T. Thompson*, 43 ECAB 919 (1992).

¹¹ *Leon D. Faidley, Jr., supra* note 3.

¹² *Gregory Griffin, supra* note 4.

Chairman

David S. Gerson
Alternate Member

Willie T.C. Thomas
Alternate Member